

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JUNIOR COLLINS,

Plaintiff,

Case # 17-CV-6462-FPG

v.

DECISION AND ORDER

J. CLINTON, et al.,

Defendants.

On July 13, 2017, *pro se* Plaintiff Junior Collins brought this case against Defendants Clinton, Colbert, Bucher, Greening, Patterson, and Schmitt for alleged violations of his constitutional rights while he was incarcerated at Attica Correctional Facility. ECF No. 1. The Court referred this case to United States Magistrate Judge Marian W. Payson for all pretrial matters excluding dispositive motions. ECF No. 20.

On April 3, 2019, Judge Payson issued a report and recommendation (“R&R”) in which she recommends that the Court dismiss this case due to Plaintiff’s failure to prosecute. ECF No. 28. The R&R stated that Plaintiff had 14 days after he received the R&R to file objections to it or request an extension of time to do so. *Id.* at 6. Despite this directive, Plaintiff has not filed anything or otherwise communicated with the Court.

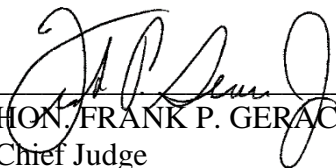
Generally, the Court reviews portions of the R&R to which a party makes specific objections *de novo*. Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1)(C). When a party does not object to the R&R, however, the Court will review the R&R for clear error. *EEOC v. AZ Metro Distributors, LLC*, 272 F. Supp. 3d 336, 339 (E.D.N.Y. 2017) (quoting *Dafeng Hengwei Textile Co. v. Aceco Indus. & Commercial Corp.*, 54 F. Supp. 3d 279, 283 (E.D.N.Y. 2014)). “When performing such a ‘clear error’ review, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Boice v. M+W U.S., Inc.*, 130

F. Supp. 3d 677, 686 (N.D.N.Y. 2015) (internal quotation marks omitted). After conducting the appropriate review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

The Court reviewed Judge Payson’s R&R and finds no clear error and therefore accepts and adopts the R&R in its entirety. This action is dismissed for Plaintiff’s failure to prosecute and the Clerk of Court will close this case. The Clerk of Court will also terminate the pending motion for exhaustion discovery (ECF No. 21).

IT IS SO ORDERED.

Dated: May 2, 2019
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court